Supreme Court, U.S.
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No. 051118

IN THE SUPREME COURT OF THE UNITED STATES

ALAN CROGAN, CHIEF PROBATION OFFICER, and THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioners,

v.

DARREN DAVID CHAKER, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether California Penal Code section 148.6, which makes it a misdemeanor to file a knowingly false complaint of misconduct against a peace officer, impermissibly discriminates based on the content of the speech in violation of the Free Speech Clause of the First Amendment.

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IN THE SUPREME COURT OF THE UNITED STATES

No.

ALAN CROGAN, CHIEF PROBATION OFFICER, and
THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioners,

v.

DARREN DAVID CHAKER, *Respondent*.

Alan Crogan, Chief Probation Officer, and The People of the State of California, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals for the Ninth Circuit is reported at 428 F.3d 1215. Petition Appendix ("App.") at 2a-26a. Its order denying rehearing en banc is unreported. App. at 1a. The order of the United States District Court for the Southern District of California denying the petition for writ of habeas corpus is unreported. App. at 27a-107a.

STATEMENT OF JURISDICTION

The opinion of the Court of Appeals for the Ninth Circuit was filed on November 3, 2005. An order denying Petitioners' petition for rehearing en banc was filed on December 7, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution provides in relevant part: "Congress shall make no law. . . abridging the freedom of speech . . . ."

The Fourteenth Amendment to the United States Constitution provides in relevant part that no state "shall deprive any person of life, liberty, or property, without due process of law . . . ."

California Penal Code section 148.6 (a)(1) provides in relevant part: "Every person who files any allegation of misconduct against any peace officer, . . . , knowing the allegation to be false, is guilty of a misdemeanor."

STATEMENT OF THE CASE

1. In 1996, Respondent Darren David Chaker was arrested by City of El Cajon Police Detective Bill Bradberry for theft of services for retrieving his car from a mechanic without paying for the repairs. Some months later, Chaker filed a claim for damages with the City of El Cajon alleging Detective Bradberry injured him during the arrest by hitting him in the ribs, twisting his wrist and failing to secure him in the police car after the arrest. Nearly a year after the arrest, Chaker sent a letter to the City of El Cajon Police Department, Internal Affairs Division, making the same complaint against Detective Bradberry. The letter was signed under penalty of perjury.

Based on the letter Chaker sent to the Internal Affairs Division of the El Cajon Police Department, the San Diego County District Attorney charged Chaker in a misdemeanor criminal complaint with filing a knowingly false allegation of misconduct against Detective Bradberry in violation of California Penal Code section 148.6 (a)(1). A jury found Chaker guilty of the charge and the court sentenced him to two days

custody with credit for time already served, fifteen days of public service, and three years of informal, unsupervised probation. The court also ordered Chaker to pay a fine and restitution totaling $1,142.

2. Chaker appealed (but did not raise a First Amendment claim) and the Appellate Department of the San Diego Superior Court affirmed his conviction. Chaker later filed a petition for writ of habeas corpus in the superior court and two such petitions in the California Supreme Court, first claiming ineffective assistance of counsel and, later, denial of self-representation. Each of these petitions was denied.

3. Chaker filed a petition for writ of habeas corpus in the federal district court, invoking its jurisdiction under 28 U.S.C. § 2254. While this petition was pending, Chaker filed a third habeas corpus petition in the California Supreme Court which raised, for the first time, a First Amendment challenge to California Penal Code section 148.6 (West Supp. 2006). The state supreme court denied the petition for procedural reasons. (The California Supreme Court later considered on the merits and rejected a First Amendment challenge to section 148.6 in *People v. Stanistreet*, 29 Cal. 4th 497, 58 P.3d 465, 127 Cal. Rptr. 2d 633 (2002), *cert. denied, sub nom., Stanistreet v. California*, 538 U.S. 1020 (2003).) Chaker was then permitted to amend his federal petition to include the First Amendment claim.

4. On September 24, 2003, the district court filed an order denying Chaker's amended petition for writ of habeas corpus. App. at 27a-107a. The court considered Chaker's First Amendment challenge to section 148.6 based upon an "independent review of the record" because there was no reasoned state court decision on the claim. App. at 40a-41a. The district court rejected the First Amendment challenge, finding that section 148.6's content discrimination within a proscribable area of speech fit within the first of the three categories set out in this Court's opinion in *R.A.V. v. St. Paul*, 505 U.S. 377 (1992), namely, that the basis for the content discrimination